

5 June 2019

Response to WG Consultation on *Environmental Principles and Governance in Wales Post European Union Exit*

The Information Commissioner (the Commissioner) is pleased to respond to the consultation on *Environmental Principles and Governance in Wales Post European Union Exit*.

In addition to her regulatory responsibilities for data protection legislation and the Freedom of Information Act, the Commissioner also promotes and regulates the Environmental Information Regulations 2004 (EIR), which are particularly relevant to your consultation.

The Commissioner is independent of government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where she can, and taking appropriate action where the law is broken.

Public Participation & Accessibility of Environmental Information

The Commissioner acknowledges and supports the centrality of public participation to both sustainable development and management of natural resources, as set out in the various international and national level principles listed. Ensuring public rights of access to environmental information from all parts of the state is a vital foundation to public engagement. The EIR meet this need by providing a public right of access to environmental information held by public bodies, unless an exemption applies.

The EIR are derived from European law. They implement the European Council Directive 2003/4/CE on public access to environmental information (the EC Directive) in the UK. The principle behind the law is that giving the public access to environmental information will encourage greater awareness of issues that affect the environment. Greater awareness helps increase public participation in decision-making; it makes public bodies more accountable and transparent and it builds public confidence and trust in them.

The source of the EC Directive is the UN Convention on *Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters 1998*, more commonly known as 'the Aarhus Convention'. The EU and

the UK have separately signed the Convention, so it will continue to apply in the event of the UK exiting the EU.

Article 1 of the Aarhus Convention states:

"In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each party shall guarantee the rights of access to information, public participation in decision-making, and access to justice on environmental matters in accordance with the provisions of this Convention."

The EIR provide the public with a right to request environmental information from public bodies, as well as a duty on those public bodies to proactively publish certain environmental information. In the Regulations, 'environmental information' is defined as any information on:

- the state of the elements of the environment and the interaction among these elements;
- factors affecting or likely to affect those elements;
- measures or activities affecting or likely to affect those factors or elements, or designed to protect those elements;
- reports on the implementation of environmental legislation;
- cost-benefit and other economic analyses and assumptions used within the framework of those measures and activities; and
- the state of human health and safety, conditions of human life, cultural sites and built structures in as much as they are or may be affected by those elements.

The Commissioner has a general duty to investigate complaints from members of the public who believe that a public authority has failed to respond correctly to their request for information. If the complaint is not resolved informally, she will issue a decision notice. If she finds that an organisation has breached the EIR, the decision notice will tell the organisation what they need to do to put things right.

The Commissioner also has powers to enforce compliance where public bodies have failed to proactively provide environmental information in line with the Regulations, whether or not she has received a complaint about this.

The ICO website guide on the EIR can be accessed [here](#).

Annex 5

The entry relating to the Information Commissioner is out of date with regard to data protection laws as the 1998 Act was replaced in 2018 by the General Data Protection Regulation and the Data Protection Act 2018. But most importantly for the current consultation, your description does not include the Commissioner's EIR or other public access to information functions.

The Information Commissioner is the UK's independent regulator for Data Protection and Freedom of Information, with key responsibilities under the Data Protection Act 2018 and Freedom of Information Act 2000. The Commissioner also has a number of additional regulatory and legislative duties under other pieces of legislation. Of particular relevance to environmental issues are:

- The Environmental Information Regulations 2004 provide a means of access to environmental information. The Regulations cover more organisations than the Freedom of Information Act, including some private sector bodies, and have fewer exceptions.
- The Infrastructure for Spatial Information in the European Community Regulations 2009 (INSPIRE) give the Information Commissioner enforcement powers in relation to the pro-active provision by public authorities of geographical or location based information.
- The Re-use of Public Sector Information Regulations 2015 gives the public the right to request the re-use of public sector information and details how public sector bodies can charge for re-use and license the information. The ICO deals with complaints about how public sector bodies have dealt with requests to re-use information.

Please contact our Cardiff office if you would like to discuss any aspects of this response.

Yours sincerely



David Teague
Regional Manager (Wales)
Information Commissioner's Office
Cc: Data Protection Officer, Welsh Government